

AMENDED IN SENATE JULY 6, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1671**

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**Introduced by Assembly Member Huffman**  
*(Coauthors: Assembly Members Ammiano, Jeffries, Portantino, and Wieckowski)*

February 14, 2012

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An act to amend ~~Section~~ *Sections 7202 and 10167* of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1671, as amended, Huffman. Department of Transportation: retention-~~proceeds~~; *proceeds: State Contract Act: bids: bidder's security.*

Existing law prohibits the Department of Transportation, until January 1, 2014, from withholding retention proceeds when making progress payments for work performed by a contractor.

This bill would make these provisions operative until January 1, 2020. The bill would also make a statement of legislative findings.

*The State Contract Act, generally requires bids to be presented under sealed cover and accompanied by bidder's security in the form of cash, a cashier's check, a certified check, or a bidder's bond, as provided.*

*This bill would allow as acceptable forms of bidder's security, an electronic bidder's bond by an admitted surety insurer; a signed bidder's bond by an admitted surety insurer; and cash, a cashier's check, or certified check, as provided.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. ~~(a)~~—The Legislature finds and declares all of the following:

~~(1)~~

(a) California's construction industry has experienced one of the worst economic downturns in its history.

~~(2)~~

(b) Unemployment within California's construction industry has exceeded 30 percent or more statewide.

~~(3)~~

(c) The California Department of Transportation (Caltrans) remains one of the few areas in public works that continues to actively request bids for numerous construction projects statewide.

~~(4)~~

(d) These projects have had, and will continue to have, a significant positive impact on employment within the construction industry.

~~(5)~~

(e) Much of Caltrans' work is funded through federal moneys which already stipulate that 0-percent retentions can be withheld on all passthrough funding.

~~(6)~~

(f) Zero-percent retentions have had such a positive impact on contractor viability and, in turn, employment particularly during these extremely competitive times.

~~(7)~~

(g) Increased competition through the viability of contractors that have benefited from 0-percent retentions ensures that Caltrans receives the best prices on all of its construction work.

~~(8)~~

(h) Extending the operation of 0-percent retentions on transportation contracts provides confidence within California's construction industry to continue working with Caltrans on projects to help rebuild California's infrastructure.

SEC. 2. Section 7202 of the Public Contract Code is amended to read:

7202. (a) The Department of Transportation is prohibited from withholding retention proceeds when making progress payments to a contractor for work performed on a transportation project.

1 (b) Nothing in this section shall alter, amend, or impair the  
2 rights, duties, and obligations of an original contractor, its  
3 subcontractors, and all subcontractors thereunder, relating to the  
4 construction of any public work of improvement as set forth in  
5 Section 7200 of the Public Contract Code.

6 (c) The department shall promptly notify the appropriate policy  
7 committees of the Legislature if the state's best interests are  
8 compromised because retention was not withheld on a  
9 transportation project.

10 (d) This section shall become inoperative and shall be repealed  
11 on January 1, 2020.

12 *SEC. 3. Section 10167 of the Public Contract Code is amended*  
13 *to read:*

14 10167. (a) All bids shall be presented under sealed cover and  
15 accompanied by one of the following forms of bidder's security:  
16 ~~cash, a cashier's check, certified check, or a bidder's bond executed~~  
17 ~~by an admitted surety insurer, made payable to the director of the~~  
18 ~~department under which the work is to be performed. The security~~  
19 ~~shall be in an amount equal to at least 10 percent of the amount~~  
20 ~~bid. A bid shall not be considered unless one of the forms of~~  
21 ~~bidder's security is enclosed with it.~~

22 (1) *An electronic bidder's bond by an admitted surety insurer*  
23 *submitted using an electronic registry service approved by the*  
24 *department advertising the contract.*

25 (2) *A signed bidder's bond by an admitted surety insurer*  
26 *received by the department advertising the contract.*

27 (3) *Cash, a cashier's check, or certified check received by, and*  
28 *made payable to, the director of the department advertising the*  
29 *contract.*

30 (b) *The required bidder's security shall be in an amount equal*  
31 *to at least 10 percent of the amount bid. A bid shall not be*  
32 *considered unless one of the forms of bidder's security is enclosed*  
33 *with it.*

34 (c) *All bids submitted pursuant to this section shall also comply*  
35 *with the provisions of Section 1601 of the Public Contract Code.*